

Your letter also mentions the option to place the new system outside the scope of the Insurance Directives. With respect to this issue, may I remind you that, according to the Court of Justice, insurance activities forming part of a statutory system of social security fall under the scope of the Insurance Directives when they are conducted by insurance undertakings at their own risk following insurance techniques and on the basis of contractual relationships governed by private law. The fact that they are conducted by undertakings having a legal form other than that expressly provided in the Insurance Directives may not be sufficient to validly exclude these activities from the scope of the Directive. A Member State may not allow an undertaking having another legal form to conduct insurance activities. Consequently, should the Netherlands decide to set up a system outside the scope of the Insurance Directives, they would therefore have to ensure that this activity could be not considered as an insurance activity.

Finally, I should point out that the Commission does not usually gives its formal opinion on the drafts of future legislation that a Member State is considering. The European Court of Justice is the only body which is competent to decide whether a national law complies with EU law. Therefore the Commission's opinion on a draft or an outline of national legislation cannot prejudice the interpretation that the Court of Justice may give. Furthermore, the Commission wishes to underline that any opinion it might offer, is without prejudice to the sovereign powers of Members States' institutions holding legislative powers.

My services, of course, remain at your disposal for any further information you may require.

I hope that this reply may be of help in the process of reviewing the Dutch health insurance system.

Yours sincerely,

Frans Balkenem